

117TH CONGRESS
2D SESSION

H. R. 9495

To prioritize United States contractors with respect to federally funded infrastructure projects, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 12, 2022

Mr. NEHLS (for himself and Mr. GARAMENDI) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To prioritize United States contractors with respect to federally funded infrastructure projects, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Domestic Preferences
5 for Building America Act”.

6 **SEC. 2. PRIORITY FOR UNITED STATES CONTRACTORS.**

7 (a) **REQUIREMENTS WITH RESPECT TO CERTAIN**
8 **CONTRACT AWARDEES.—**

1 (1) IN GENERAL.—Amounts made available
2 through a program for Federal financial assistance
3 may be obligated for an infrastructure project with
4 a value of \$100,000,000 or more only if the recipi-
5 ent of such amounts certifies that, in obligating the
6 amounts—

7 (A) subject to the occurrence of adequate
8 competition, the recipient shall award contracts
9 only to—

10 (i) United States persons; and

11 (ii) qualified United States joint ven-
12 tures; and

13 (B) the recipient shall not award contracts
14 to an entity that is owned or controlled by, is
15 a subsidiary of, or is otherwise related legally or
16 financially to a corporation based in a covered
17 country.

18 (2) EXCEPTION.—For purposes of paragraph
19 (1)(B), the term “otherwise related legally or finan-
20 cially” does not include a minority relationship or in-
21 vestment.

22 (b) LIMITATION ON SUBCONTRACTING.—With re-
23 spect to a project described in subsection (a)(1) that is
24 funded in whole or in part by Federal financial assistance,
25 a prime contractor and any subcontractor of such prime

1 contractor, at any tier, may enter into a subcontract re-
2 lated to such project only with a United States person or
3 qualified United States joint venture.

4 (c) RULEMAKING.—Not later than 1 year after the
5 date of the enactment of this section, the Director of the
6 Office of Management and Budget shall establish, for pur-
7 poses of this section—

8 (1) procedures for determining whether bids or
9 proposals for contracts are submitted by a United
10 States person or a qualified United States joint ven-
11 ture; and

12 (2) requirements for record retention and re-
13 porting.

14 (d) RULE OF CONSTRUCTION.—Nothing in this sec-
15 tion shall be construed to limit a recipient of Federal fi-
16 nancial assistance from awarding a contract under a State
17 or Federal program that supports disadvantaged business
18 enterprises, including such a program that supports
19 women business owners or minority business owners.

20 (e) CONSISTENCY WITH INTERNATIONAL AGREE-
21 MENTS.—This section shall be applied in a manner con-
22 sistent with United States obligations under international
23 agreements.

24 (f) DEFINITIONS.—In this section:

1 (1) ADEQUATE COMPETITION.—The term “ade-
2 quate competition” means the submission of respon-
3 sive bids from 2 or more qualified bidders that are
4 United States persons or qualified United States
5 joint ventures.

6 (2) COVERED COUNTRY.—The term “covered
7 country” means a country that—

8 (A) is identified, as of the date of the en-
9 actment of this section, as a nonmarket econ-
10 omy country (as defined in section 771(18) of
11 the Tariff Act of 1930 (19 U.S.C. 1677(18)));

12 (B) was identified by the United States
13 Trade Representative in the most recent report
14 required by section 182 of the Trade Act of
15 1974 (19 U.S.C. 2242) as a foreign country in-
16 cluded on the priority watch list defined in sub-
17 section (g)(3) of that section; and

18 (C) is subject to monitoring by the Trade
19 Representative under section 306 of the Trade
20 Act of 1974 (19 U.S.C. 2416).

21 (3) FEDERAL AGENCY; FEDERAL FINANCIAL
22 ASSISTANCE; INFRASTRUCTURE; PROJECT.—The
23 terms “Federal agency”, “Federal financial assist-
24 ance”, “infrastructure”, and “project” have the
25 meanings given such terms in section 70912 of the

1 Infrastructure Investment and Jobs Act (41 U.S.C.
2 8301 note).

3 (4) QUALIFIED UNITED STATES JOINT VEN-
4 TURE.—The term “qualified United States joint ven-
5 ture” means a joint venture in which not less than
6 51 percent of the assets of the joint venture are
7 owned by United States persons.

8 (5) UNITED STATES PERSON.—The term
9 “United States person” means a person that—

10 (A) is incorporated or legally organized
11 under the laws of the United States or a juris-
12 diction located within the United States and
13 has been so incorporated or organized for not
14 less than 5 years before the date on which an
15 invitation is issued for bids or proposals with
16 respect to the relevant contract;

17 (B) has its principal place of business in
18 the United States;

19 (C) has previously performed services with-
20 in the United States that are similar in com-
21 plexity and type to the services required for the
22 relevant contract;

23 (D) has within the United States the tech-
24 nical and financial resources necessary to per-
25 form the relevant contract; and

1 (E) employs individuals who are citizens or
2 residents of the United States in not less than
3 51 percent of—

4 (i) the principal management posi-
5 tions located in the United States;

6 (ii) the permanent, full-time positions
7 located in the United States; and

8 (iii) the supervisory positions located
9 in the United States.

10 (g) EFFECTIVE DATE.—This Act shall take effect
11 180 days after the date of the enactment of this Act.

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